

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**NEW YORK LIFE INSURANCE
AND ANNUITY CORPORATION,**

Plaintiff,

Case No.: 4:21-cv-490-O

v.

**Barbara Brown Family Trust DTD 3/12/2010;
Barbara Jean Brown Living Trust DTD 3/12/2010;
Sharon Kay Britton and Ken Britton, as co-Trustees of the
Barbara Jean Brown Family Trust DTD 3/12/2010;
Barbara Jean Brown Living Trust DTD 5/29/2018; Bob Shelton,
as Trustee of Barbara Jean Brown Living Trust DTD 5/29/2018,**

Defendants.

JOINT STATUS REPORT

Pursuant to the Court's Order dated February 17, 2022 (ECF Doc. No. 43), Plaintiff New York Life Insurance and Annuity Corporation ("NYLIAC"), Defendants Bob Shelton ("Shelton"), as Trustee of the Barbara Jean Brown Living Trust DTD 5/29/2018 ("2018 Living Trust") and Sharon Kay Britton and Ken Britton ("the Brittons"), as co-Trustees of the Barbara Jean Brown Family Trust DTD 3/12/2010, by and through their undersigned counsel, submit the following status report:

1. Relevant Procedural Background

This is an interpleader action commenced by NYLIAC in connection with the death benefits due upon the death of Barbara Jean Brown ("Annuitant") under two annuity policies: Annuity Policy No. XXXX9460 ("Policy A") and Annuity Policy NO. XXX0198 ("Policy B"). On or about May 10, 2021, pursuant to the Court's Order (ECF Doc. No. 13), NYLIAC deposited two checks with the

registry of the Court:(1) one in the amount of \$14,436.86 representing Policy A death benefits plus applicable interest; and (2) another in the amount of \$34,081.36 representing Policy B death benefits plus applicable interest with the registry of the Court, for a total sum of \$48,518.22 (“Interpleader Funds”). On or about June 8, 2021, NYLIAC, Shelton, and the Brittons (collectively, “the Parties”) filed a Joint Report (ECF Doc. No. 20) setting forth the issues of the case and the proposed discovery and trial dates. On that same day, the Court filed a Scheduling Order setting forth a summary of critical dates, including a trial date of April 18, 2022 (ECF Doc. No. 21).

On July 12, 2021, NYLIAC filed its Motion for Interpleader Relief and Attorneys’ Fees (ECF Doc. No. 22), to which Shelton filed an opposition (ECF Doc. No. 28). On July 27, 2021, Shelton then filed a Motion for Leave to File a Counterclaim (ECF Doc. No. 30), to which NYLIAC filed an opposition (ECF Doc. No. 32). On August 2, 2021, the Court issued an order granting NYLIAC’s Motion to Interpleader Relief and Attorneys’ Fees and denying Shelton’s Motion for Leave to File a Counterclaim (“August 2 Order”) (ECF Doc. No. 33).

On or about August 27, 2021, Defendant Bob Shelton subsequently filed a Motion to Alter or Amend Judgment/Motion for Reconsideration of the August 2 Order (“Motion for Reconsideration”) (ECF Doc. No. 34). On or about September 14, 2021, the Court denied the Motion for Reconsideration (“September 14 Order”) (ECF Doc. No. 36). On October 13, 2021, Defendant Bob Shelton filed a Notice of Appeal of the Court’s August 2 Order and September 14 Order (ECF Doc. No. 37). The Fifth Circuit docketed the appeal and set forth the briefing schedule.

Before briefs were submitted, on or about December 15, 2021, Shelton, with the consent of the Brittons, filed a Motion to Release the Interpleaded Funds to the 2018 Living Trust (“Motion to Release”) (ECF Doc. No. 40). NYLIAC filed a response on December 21, 2021 stating that it did not

take a position with respect to the distribution of the Interpleader Funds with the exception of the \$5,000 in NYLIAC's attorneys' fees which were subject to the appeal.

On December 22, 2021, Shelton filed his Appellant's Brief on the issues of the Court's orders granting NYLIAC relief in Interpleader and awarding \$5,000 in NYLIAC's Attorneys' fees and denying Shelton's Motion to file a Counterclaim and denying his request for attorneys' fees and costs. On January 20, 2022, the Court granted Shelton's Motion to Release the Interpleader Funds to the 2018 Living Trust. On January 21, 2022, NYLIAC filed its Appellee's brief and on February 11, 2022, Shelton filed his Reply brief.

2. **All Scheduling Order Deadlines, including the Trial Date, should be Stayed Pending the Results of the Appeal**

With the distribution of the Interpleader Funds to the 2018 Living Trust with the exception of the \$5,000 of NYLIAC's Attorneys' fees, all remaining issues in dispute in this matter are the subject of Shelton's appeal. All appellate briefs have been filed but the Fifth Circuit has not issued any further dates in connection with the appeal. Whether there are any triable issues of fact will be determined on the outcome of the Fifth Circuit's ruling of the issues on appeal. Therefore, the parties respectfully request that the Court stay all deadlines set forth in the Scheduling Order (ECF Doc. No. 21), including the anticipated trial date of April 18, 2022 until further notice of the Fifth Circuit's decision on the issues on appeal in this matter.

Dated: February 23, 2022

Respectfully Submitted,

/s/ Linda G. Moore

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CERTIFICATE OF SERVICE

I certify that on February 23, 2022, a true and correct copy of the foregoing document was served on all counsel of record through the Court's CM/ECF system:

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